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Attorneys for Defendants WELLPATH, KIP HALLMAN, JORGE DOMINICIS,
THOMAS PANGBURN, and PAUL FRANCISCO.

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION**

ESTATE OF RAFAEL RAMIREZ
LARA, deceased, by and through
PATRICIA RAMIREZ; PATRICIA
RAMIREZ; RAFAEL RAMIREZ; and
JENNIFER RAMIREZ,

Plaintiffs,

v.

COUNTY OF MONTEREY; SHERIFF
STEVE BERNAL, in his individual and
official capacity; JAMES BASS, in his
individual and official capacity;
JOHNATHAN THORNBURG, in his
individual and official capacity; RAY
TONGOL, in his individual and official
capacity; J. TEJEDA, in his individual and
official capacity; WELLPATH; KIP
HALLMAN; JORGE DOMINICIS;
THOMAS PANGBURN; PAUL
FRANCISCO, and DOES 1 and 2,

Defendants.

Case No.: 4:21-cv-02409-PJH

**DEFENDANTS WELLPATH, KIP
HALLMAN, JORGE DOMINICIS,
THOMAS PANGBURN, AND
PAUL FRANCISCO'S ANSWER
TO PLAINTIFFS' COMPLAINT;
DEMAND FOR JURY TRIAL**

Action Filed: April 2, 2021
Judge: Hon. Phyllis J. Hamilton
Ct. 3 – 3rd Floor

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**DEFENDANTS WELLPATH, KIP HALLMAN, JORGE DOMINICIS, THOMAS
PANGBURN, AND PAUL FRANCISCO'S ANSWER TO PLAINTIFFS'
COMPLAINT; DEMAND FOR JURY TRIAL**

COMES NOW, Defendants WELLPATH, KIP HALLMAN, JORGE DOMINICIS, THOMAS PANGBURN, and PAUL FRANCISCO, in response to Plaintiff's Complaint, answers, alleges, and pleads as follows:

INTRODUCTION

1. Defendants admit Mr. Lara was incarcerated in the Monterey County Jail and died in jail. Defendant can neither admit nor deny the remainder of allegations of paragraph 1 based on lack of information.

2. Defendants admit there was a settlement agreement in the *Hernandez* case, deny the allegations of paragraph 2 as to themselves, and can neither admit nor deny the allegations of paragraph 2 as to any other defendants.

JURISDICTION

3. Defendants admit plaintiffs are seeking relief under the statutes and code sections cited.

4. Defendants admit this Court has jurisdiction over this matter.

5. Defendants admit this Court has supplemental jurisdiction over this matter.

VENUE

6. Defendants admit the venue in this Court is proper.

7. Defendants admit Rule 3 of the FRCP and LR 3-2(e) authorizes assignments to this division because a substantial part of the events or omissions giving rise to Plaintiffs' claims occurred in the counties served by this division.

PARTIES

8. Defendants admit Mr. Lara was incarcerated from September 1, 2019 and died in jail on December 22, 2018. Defendants can neither admit nor deny the remainder of allegations of paragraph 8 based on lack of information.

9. Defendants can neither admit nor deny the allegations of paragraph 9 based on lack of information.

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20. Defendants admit Jorge Dominicis is or was Chief Executive Officer of Wellpath. Defendants deny the remainder of allegations of paragraph 20.

21. Defendants admit Thomas Pangburn is or was the Chief Clinical Officer for Wellpath. Defendants deny the remainder of allegations of paragraph 21.

22. Defendants admit Dr. Francisco is a psychiatrist who is or was practicing psychiatry at the Monterey County Jail. Defendants deny the remainder of the allegations of paragraph 22.

23. Defendants can neither admit nor deny the allegations of paragraph 23 based on lack of information.

24. Defendants can neither admit nor deny the allegations of paragraph 24 based on lack of information.

25. Defendants deny the allegations of paragraph 25.

EXHAUSTION OF PRE-LAWSUIT PROCEDURES

FOR STATE LAW CLAIMS

26. Defendants can neither admit nor deny the allegations of paragraph 26 based on lack of information.

FACTUAL ALLEGATIONS

I. Defendants' Longstanding Failure to Provide Adequate Health Care at Monterey County Jail

27. Defendants deny the allegations of paragraph 27 as to themselves and can neither admit nor deny the remainder of the allegations of paragraph 27 as to any other defendants based on lack of information.

28. Defendants can neither admit nor deny the allegations of paragraph 28 based on lack of information.

29. Defendants deny the allegations of paragraph 29 as to themselves and can neither admit nor deny the remainder of the allegations of paragraph 29 as to any other defendants based on lack of information.

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30. Defendants deny the allegations of paragraph 30 as to themselves and can neither admit nor deny the remainder of the allegations of paragraph 30 as to any other defendants based on lack of information.

31. Defendants admit a preliminary injunction was issued by the Northern District Court in the *Hernandez* case, and ordered a remedial plan. Defendants deny the remainder of allegations of paragraph 31.

32. Defendants admit the parties in the *Hernandez* case filed a settlement agreement which required creation of Implementation Plans for improvements to certain aspects of the jail's custody and healthcare systems.

33. Defendants admit CFMG and Monterey County submitted Implementation Plans including various revisions to policies and procedures related to certain aspects of the jail's custody and healthcare systems.

34. Defendants admit the allegations of paragraph 34.

35. Defendants admit the *Hernandez* case remains ongoing. Defendants deny the remainder of allegations of paragraph 35.

36. Defendants deny the allegations of paragraph 36.

37. Defendants deny the allegations of paragraph 37 as to themselves and can neither admit nor deny the remainder of the allegations of paragraph 37 as to any other defendants based on lack of information.

II. Defendants' Knowledge of Mr. Lara's Serious Health and Language Interpretation Needs

38. Defendants admit Mr. Larea was incarcerated several timers between April 2018 and December 2019.

39. Defendants admit Mr. Lara was provided a Spanish Translator while incarcerated.

40. Defendants can neither admit nor deny the allegations of paragraph 40 based on lack of information.

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III. Mr. Lara's Death on December 22, 2019

63. Defendants can neither admit nor deny the allegations of paragraph 63 based on lack of information.

64. Defendants can neither admit nor deny the allegations of paragraph 64 based on lack of information.

65. Defendants can neither admit nor deny the allegations of paragraph 65 based on lack of information.

66. Defendants admit a mandown was called for Mr. Lara for emergency response on December 22, 2019 and he was transferred to Natividad Medical Center and died on December 22, 2019. Defendants can neither admit nor deny the remainder of allegations of paragraph 66 based on lack of information.

67. Defendants admit a postmortem examination was conducted and a report was created by the medical examiner. Defendants can neither admit nor deny the remainder of allegations of paragraph 67 based on lack of information.

68. Defendants deny the allegations of paragraph 68 as to themselves and can neither admit nor deny the remainder of the allegations of paragraph 68 as to any other defendants based on lack of information.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF

**Deliberate Indifference to Serious Medical Needs in
Violation of the Fourteenth and Eighth Amendments to the Constitution of the
United States (Survival Action – 42 U.S.C. § 1983)
(Plaintiff Estate Against All Defendants)**

69. In response to the allegations of paragraph 69, defendants admit, deny, and/or neither admit nor deny the allegations as set forth in the relevant paragraphs above.

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82. Defendants deny the allegations of paragraph 82 as to themselves, and can neither admit nor deny the allegations of paragraph 82 as to any other defendants.

83. Defendants deny the allegations of paragraph 83 as to themselves, and can neither admit nor deny the allegations of paragraph 83 as to any other defendants.

SECOND CLAIM FOR RELIEF

Failure to Protect from Harm in Violation of the Fourteenth and Eighth

Amendments to the Constitution of the United States

(Survival Action – 42 U.S.C. § 1983)

(Plaintiff Estate Against All Defendants)

84. In response to the allegations of paragraph 84, defendants admit, deny, and/or neither admit nor deny the allegations as set forth in the relevant paragraphs above.

85. Defendants admit plaintiffs are bringing this action based on the statutes cited and admit Mr. Lara was incarcerated in the Monterey County Jail from September 1, 2019 through December 22, 2019. Defendants can neither admit nor deny the remainder of allegations of paragraph 85 based on lack of information

86. Defendants deny the allegations of paragraph 86 as to themselves, and can neither admit nor deny the allegations of paragraph 86 as to any other defendants.

87. Defendants deny the allegations of paragraph 87 as to themselves, and can neither admit nor deny the allegations of paragraph 87 as to any other defendants.

88. Defendants deny the allegations of paragraph 88 as to themselves, and can neither admit nor deny the allegations of paragraph 88 as to any other defendants.

89. Defendants deny the allegations of paragraph 89 as to themselves, and can neither admit nor deny the allegations of paragraph 89 as to any other defendants.

90. Defendants deny the allegations of paragraph 90 as to themselves, and can neither admit nor deny the allegations of paragraph 90 as to any other defendants.

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1 91. Defendants deny the allegations of paragraph 91 as to themselves, and can
2 neither admit nor deny the allegations of paragraph 91 as to any other defendants.

3 **THIRD CLAIM FOR RELIEF**

4 **Deprivation of Substantive Due Process Rights in Violation of First and Fourteenth**
5 **Amendments to the Constitution of the United States –Loss of Parent/Child**
6 **Relationship (42 U.S.C. § 1983)**
7 **(Plaintiffs Patricia Ramirez, Rafael Ramirez, and Jennifer Ramirez Against all**
8 **Defendants)**

9 92. In response to the allegations of paragraph 92, defendants admit, deny,
10 and/or neither admit nor deny the allegations as set forth in the relevant paragraphs
11 above.

12 93. Defendants deny the allegations of paragraph 93 as to themselves, and can
13 neither admit nor deny the allegations of paragraph 93 as to any other defendants.

14 94. Defendants deny the allegations of paragraph 94 as to themselves, and can
15 neither admit nor deny the allegations of paragraph 94 as to any other defendants.

16 **FOURTH CLAIM FOR RELIEF**

17 **Wrongful Death – California Code Civ. Proc. § 377.60**

18 **(All Plaintiffs Against All Defendants)**

19 95. In response to the allegations of paragraph 95, defendants admit, deny,
20 and/or neither admit nor deny the allegations as set forth in the relevant paragraphs
21 above.

22 96. Defendants deny the allegations of paragraph 96 as to themselves, and can
23 neither admit nor deny the allegations of paragraph 96 as to any other defendants.

24 97. Defendants deny the allegations of paragraph 97 as to themselves, and can
25 neither admit nor deny the allegations of paragraph 97 as to any other defendants.

26 98. Defendants deny the allegations of paragraph 98 as to themselves, and can
27 neither admit nor deny the allegations of paragraph 98 as to any other defendants.

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FIFTH AFFIRMATIVE DEFENSE

As and for fifth and separate affirmative defense, defendants allege on information and belief that persons or entities other than these answering defendants were responsible for the damages, if any there were which defendants deny, alleged by plaintiffs. It was this fault or negligence of third parties, and not any act or acts of these answering defendants, which proximately contributed to the damages, if any, suffered by plaintiffs. This defense is interposed only in the alternative and does not admit any of the allegations of the Complaint.

SIXTH AFFIRMATIVE DEFENSE

As and for sixth and separate affirmative defense, defendants allege that plaintiffs' action are barred by all applicable *Government Code* immunities including, but not limited to §§ 815.6, 818.2, 818.6, 818.8, 820, 820.8, 821, 821.4, 821.6, 822.2, 844.6, 845, 845.6, 845.8(b) and 846. Said sections are pleaded as though fully set forth herein.

SEVENTH AFFIRMATIVE DEFENSE

As and for seventh and separate affirmative defense, defendants allege they are entitled to immunities provided by the *California Business & Professions Code* §2395, 2396 and 2397.

EIGHTH AFFIRMATIVE DEFENSE

As and for eighth and separate affirmative defense, defendants are immune from liability by reason of the provisions of the California Penal Code, including but not limited to §834a, 835, 835a, 836, 836.5, 847 and *Civil Code* §43.55.

NINTH AFFIRMATIVE DEFENSE

As and for ninth and separate affirmative defense, all the while denying that plaintiffs have any constitutional claim or right as alleged or at all, further deny that any act or failure to act as alleged or otherwise in contravention of plaintiffs' civil rights occurred, these answering defendants assert that all actions or decisions not to act by these defendants were performed in good faith and without malice and without realization

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1 or recognition that such conduct would violate any rights of plaintiffs, if in fact plaintiffs'
2 rights were violated which these defendants deny, such acts or decisions not to act as
3 were performed, were performed with due care and with due regard for the rights of all
4 parties involved, including the public, and as such, these answering defendants are
5 immune from claims that they violated plaintiffs' alleged civil rights based upon this
6 good faith belief. Furthermore, each action or decision not to act was reasonable under
7 the totality of circumstances present and operative as of the time each such decision and
8 said acts or decisions not to act did not violate any clearly established statutory or
9 constitutional right of which a reasonable person should have known.

10 **TENTH AFFIRMATIVE DEFENSE**

11 As and for tenth and separate affirmative defense, defendants allege that plaintiffs
12 have failed to comply with the *Code of Civil Procedure* §425.13(a) with respect to their
13 alleged claim for punitive damages against medical care providers, with respect to any
14 alleged claim against such health care provider under California statutes.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 As and for eleventh affirmative defense, defendants allege the Complaint fails to
17 state a claim of liability against defendants, pursuant to *Monell v. Dept. of Social*
18 *Services*, 436 U.S. 658.

19 **TWELFTH AFFIRMATIVE DEFENSE**

20 As and for twelfth affirmative defense, to the extent the Complaint herein seeks
21 punitive damages, it violates defendants' right to procedural due process under the
22 Fourteenth Amendment to the United States Constitution and the Constitution of the State
23 of California, and it further violates defendants' rights to protection against "excessive
24 fines" as provided in the Eighth Amendment to the United States Constitution and in
25 Article 1, Section XVII of the Constitution of the State of California. It further violates
26 defendants' rights to substantive due process as provided in the Fifth and Fourteenth
27
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Amendments to the United States Constitution and the Constitution of the State of California.

THIRTEENTH AFFIRMATIVE DEFENSE

As and for thirteenth and separate affirmative defense, defendants allege that defendants did not deliberately indifferently adopt, ratify or enforce any custom, practice or policy which deprived the plaintiffs of any federally protected constitutional rights.

FOURTEENTH AFFIRMATIVE DEFENSE

As and for fourteenth and separate affirmative defense, defendants allege that plaintiffs did not exercise ordinary care, caution or prudence to avoid the happening of the incident complained of herein, and said incident and the injuries and damages, if any, sustained by plaintiffs were directly and proximately caused and contributed to by the negligence of said plaintiffs.

FIFTEENTH AFFIRMATIVE DEFENSE

As and for fifteenth and separate affirmative defense, defendants allege that the Complaint on file herein fails to state facts sufficient to constitute a cause of action against these answering defendants.

SIXTEENTH AFFIRMATIVE DEFENSE

As and for sixteenth and separate affirmative defense, defendants allege that plaintiffs acted with full knowledge of all the facts and circumstances surrounding plaintiffs' injuries, and that said matters of which plaintiffs assumed the risk proximately contributed to and proximately caused plaintiffs' injuries, if any.

SEVENTEENTH AFFIRMATIVE DEFENSE

As and for seventeenth and separate affirmative defense, defendants allege that damages for alleged attorney's fees are limited in this action by the provisions of Prison Litigation Reform Act, as described by the Ninth Circuit decision of *Madrid v. Gomez*, 172 F.3d 1252 (9th Cir. 1999), in that decedent was an inmate during the times of the events alleged as misconduct in this lawsuit.

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1 **EIGHTEENTH AFFIRMATIVE DEFENSE**

2 As and for eighteenth and separate affirmative defense, defendants allege that
3 plaintiffs' claims are barred by the doctrines of qualified and sovereign immunities.

4 **NINETEENTH AFFIRMATIVE DEFENSE**

5 As and for nineteenth affirmative defense, defendants allege plaintiffs have waived
6 any and all claims they may have or have had against defendants.

7 **TWENTIETH AFFIRMATIVE DEFENSE**

8 As and for twentieth affirmative defense, defendants allege plaintiffs' claims are
9 barred by *California Government Code* §820.2 which provides immunity for
10 discretionary acts of public employees and by *California Government Code* §815.2(b)
11 which bars liability against a public entity from injuries arising from alleged acts or
12 omissions of an employee of the public entity where the employee is immune from
13 liability.

14 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

15 As and for twenty-first affirmative defense, defendants allege plaintiffs have
16 engaged in conduct with respect to the activities which are the subject of the Complaint
17 and by reason of said activities and conduct, plaintiffs are stopped from asserting any
18 claim of damages or seeking any other relief against defendants.

19 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

20 As and for twenty-second affirmative defense, defendants allege that at all times
21 within the Complaint, defendants acted in good faith, without malice and within their
22 respective scope of the duties.

23 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

24 As and for twenty-third affirmative defense, defendants allege that by virtue of
25 plaintiffs' unlawful, immoral, careless, negligent and other wrongful conduct, plaintiffs
26 should be barred from recovering against defendants by the Equitable Doctrine of
27 Unclean Hands.

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TWENTY-FOURTH AFFIRMATIVE DEFENSE

As and for twenty-fourth affirmative defense, defendants allege that plaintiffs have failed to exercise reasonable care and diligence to avoid loss and to minimize damages and that, therefore, plaintiffs may not recover for losses which could have been prevented by reasonable efforts on their part or by expenditures which might reasonably have been made, and, therefore, plaintiffs' recovery, if any, should be reduced by the failure to mitigate damages, if any there be.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

As and for twenty-fifth affirmative defense, defendants allege it is not liable for any alleged acts or omissions of its independent contractors, pursuant to *Government Code* §815.4.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

As and for twenty-sixth affirmative defense, defendants allege the injuries and damages of which plaintiffs complain, if any there be, were proximately and legally caused or contributed to by the acts of other persons and/or entities, which acts were an intervening and/or superseding cause of the alleged injuries and damages, if any, thus barring plaintiffs from recovery against defendants.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

As and for twenty-seventh affirmative defense, defendants allege *Government Code* §818 bars any award of punitive damages sought to be assessed against defendants.

TWENTY-EIGHT AFFIRMATIVE DEFENSE

As and for twenty-eighth and separate affirmative defense, defendants allege that the action is barred by the appropriate statute of limitations, as set forth in *Code of Civil Procedure* §§340, 340.5, et seq.

TWENTY-NINTH AFFIRMATIVE DEFENSE

As and for a twenty-ninth and separate affirmative defense, defendants allege that in the event these answering defendants are found to be negligent, which is expressly

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herein denied, these defendants may elect to introduce evidence of any amounts paid or payable, if any, as a benefit to plaintiffs pursuant to *California Civil Code* §3333.1. This is a statutory affirmative defense. As this is an action for professional negligence, asserted against a health care provider, defendants are entitled to submit evidence of payments to plaintiffs by collateral sources.

THIRTIETH AFFIRMATIVE DEFENSE

As and for a thirtieth and separate affirmative defense, defendants allege that in the event these answering defendants are found to be negligent, which is expressly herein denied, the damages for non-economic losses shall not exceed the amounts specified in *California Civil Code* §3333.2. This is a statutory affirmative defense. As this is an action for professional negligence, asserted against a healthcare provider, plaintiffs' cause of action are governed by *California Civil Code* §3333.2, which limits plaintiffs' recovery of non-economic damages to \$250,000.

THIRTY-FIRST AFFIRMATIVE DEFENSE

As and for a thirty-first and separate affirmative defense, that in the event these answering defendants are found to be negligent, which is expressly herein denied, these defendants may elect to have future damages, if in excess of the amount specified in *California Code of Civil Procedure* §667.7, paid in whole or in part as specified in *Code of Civil Procedure* §667.7. This is a statutory affirmative defense. As this is an action for professional negligence, asserted against a healthcare provider, defendants are entitled to the provisions of *California Code of Civil Procedure* §667.7.

THIRTY-SECOND AFFIRMATIVE DEFENSE

As a thirty-second and separate affirmative defense, defendants are informed and believe and based thereon allege that they are entitled to set offs for any recovery by Plaintiffs received from any source, for the damages and costs alleged in the Complaint herein.

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THIRTY-THIRD AFFIRMATIVE DEFENSE

As and for a thirty-third affirmative defense, defendants presently have insufficient knowledge or information on which to form a belief as to whether they may have additional as yet unstated defenses available. Defendants reserve herein the right to assert additional defenses in the event discovery indicates that they would be appropriate.

Respectfully submitted,

Dated: June 3, 2021

BERTLING LAW GROUP

/s/ Peter G. Bertling

Peter G. Bertling

Jemma Parker Saunders

Attorneys for Defendants

WELLPATH, KIP HALLMAN, JORGE

DOMINICIS, THOMAS PANGBURN, and

PAUL FRANCISCO

DEMAND FOR JURY TRIAL

Defendants WELLPATH, KIP HALLMAN, JORGE DOMINICIS, THOMAS PANGBURN, and PAUL FRANCISCO hereby demand a jury trial of this matter.

Respectfully submitted,

Dated: June 3, 2021

BERTLING LAW GROUP

/s/ Peter G. Bertling

Peter G. Bertling

Jemma Parker Saunders

Attorneys for Defendants

WELLPATH, KIP HALLMAN, JORGE

DOMINICIS, THOMAS PANGBURN, and

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